

SECTION 2. This Act takes effect September 1, 1989.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 22, 1989, by a non-record vote; passed by the Senate on May 26, 1989, by a viva-voce vote.

Approved June 14, 1989.

Effective Sept. 1, 1989.

CHAPTER 491

H.B. No. 2098

AN ACT

relating to a durable power of attorney for health care.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Agent" means an adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(3) "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

(4) "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of, and reasonable alternatives to, any proposed health care.

(5) "Durable power of attorney for health care" means a document delegating to an agent the authority to make health care decisions as provided by this Act.

(6) "Health care decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

(7) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice, and includes a physician.

(8) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.

(9) "Principal" means an adult who has executed a durable power of attorney for health care.

(10) "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.

SECTION 2. SCOPE AND DURATION OF AUTHORITY. (a) Subject to this Act or any express limitation on the authority of the agent contained in the durable power of attorney for health care, the agent may make any health care decision on the principal's behalf that the principal could make but for the principal's lack of capacity to make health care decisions.

(b) An agent may exercise authority only if the principal's attending physician certifies in writing, and files the certification in the principal's medical record, that, based on the

attending physician's reasonable medical judgment, the principal lacks capacity to make health care decisions.

(c) Notwithstanding any other provisions of this Act, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:

- (1) a durable power of attorney for health care is in effect; or
- (2) the principal has the capacity to make health care decisions.

(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's directive.

(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:

- (1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or
- (2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.

(f) Notwithstanding any other provision of this Act, an agent may not consent to:

- (1) voluntary inpatient mental health services;
- (2) convulsive treatment;
- (3) psychosurgery;
- (4) abortion; or
- (5) neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.

(g) The power of attorney is effective indefinitely on execution as provided by this Act and delivery of the document to the agent, unless it is revoked as provided by this Act or the principal regains the capacity to make health care decisions. If the durable power of attorney includes an expiration date and on that date the principal lacks the capacity to make health care decisions, the power of attorney continues to be effective until the principal regains the capacity to make health care decisions unless it is revoked as provided by this Act.

SECTION 3. PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT. A person may not exercise the authority of an agent while the person serves as:

- (1) the principal's health care provider;
- (2) an employee of the principal's health care provider unless the person is a relative of the principal;
- (3) the principal's residential care provider; or
- (4) an employee of the principal's residential care provider unless the person is a relative of the principal.

SECTION 4. EXECUTION AND WITNESSES. (a) The durable power of attorney for health care must be signed by the principal in the presence of at least two or more subscribing witnesses.

(b) A witness may not, at the time of execution, be:

- (1) the agent;
- (2) the principal's health or residential care provider or the provider's employee;
- (3) the principal's spouse or heir;
- (4) a person entitled to any part of the estate of the principal on the death of the principal under a will or deed in existence or by operation of law; or
- (5) any other person who has any claim against the estate of the principal.

(c) The witnesses shall affirm that, at the time the durable power of attorney for health care was signed, the principal:

- (1) appeared to be of sound mind to make a health care decision;

(2) stated in the witness's presence that the principal was aware of the nature of the durable power of attorney for health care and that the principal was signing the document voluntarily and free from any duress; and

(3) requested that the witness serve as a witness to the principal's execution of the document.

(d) If the principal is physically unable to sign, another person may sign the durable power of attorney for health care with the principal's name in the principal's presence and at the principal's express direction.

SECTION 5. REVOCATION. (a) A durable power of attorney for health care is revoked by:

(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to the principal's mental state, competency, or capacity to make health care decisions;

(2) execution by the principal of a subsequent durable power of attorney for health care; or

(3) the divorce of the principal and spouse, if the spouse is the principal's agent.

(b) A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a durable power of attorney for health care shall immediately record the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers currently responsible for the principal's care.

SECTION 6. APPOINTMENT OF GUARDIAN. (a) On motion filed in connection with a petition for appointment of a guardian or, if a guardian has been appointed, on petition of the guardian, a probate court shall determine whether to suspend or revoke the authority of the agent.

(b) The probate court shall consider the preferences of the principal as expressed in the durable power of attorney for health care.

(c) During the pendency of the probate court's determination under Subsection (a) of this section, the guardian has the sole authority to make any health care decisions unless the probate court orders otherwise. If a guardian has not been appointed, the agent has the authority to make any health care decisions unless the probate court orders otherwise.

(d) A person, including any attending physician or health or residential care provider, who does not have actual knowledge of the appointment of a guardian or an order of the probate court granting authority to someone other than the agent to make health care decisions is not subject to criminal or civil liability and has not engaged in unprofessional conduct for implementing an agent's health care decision.

SECTION 7. INSPECTION AND DISCLOSURE OF MEDICAL INFORMATION. Subject to any limitations in the durable power of attorney for health care, an agent may, for the purpose of making a health care decision:

(1) request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;

(2) execute a release or other document required to obtain the information; and

(3) consent to the disclosure of the information.

SECTION 8. EFFECT OF DIRECTIVE. (a) A principal's health or residential care provider and an employee of the provider who knows of the existence of the principal's durable power of attorney for health care shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, this Act, and the durable power of attorney for health care.

(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.

(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this Act or the durable power of attorney

for health care shall inform the agent as soon as is reasonably possible. The agent may select another attending physician.

(d) This Act may not be construed to require a health or residential care provider who is not a physician to act in a manner contrary to a physician's order.

SECTION 9. DISCRIMINATION RELATING TO EXECUTION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a durable power of attorney for health care;

(2) require a person to execute a durable power of attorney for health care before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care; or

(3) refuse health or residential care to a person solely because the person has executed a durable power of attorney for health care.

SECTION 10. LIMITATION ON LIABILITY. (a) An agent is not subject to criminal or civil liability for a health care decision if the decision is made in good faith under the terms of the durable power of attorney for health care and the provisions of this Act.

(b) An attending physician, health or residential care provider, or a person acting as an agent for or under the physician's or provider's control is not subject to criminal or civil liability and has not engaged in unprofessional conduct for an act or omission if the act or omission:

(1) is done in good faith under the terms of the durable power of attorney for health care, the directives of the agent, and the provisions of this Act; and

(2) does not constitute a failure to exercise due care in the provision of health care services.

(c) An attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control has not engaged in unprofessional conduct for:

(1) failure to act as required by the directive of an agent or a durable power of attorney for health care if the physician, provider, or person was not provided with a copy of the durable power of attorney for health care or had no knowledge of a directive; or

(2) acting as required by an agent's directive if the durable power of attorney for health care has expired or been revoked but the physician, provider, or person does not have knowledge of the expiration or revocation.

SECTION 11. LIABILITY FOR HEALTH CARE COSTS. Liability for the cost of health care provided as a result of the agent's decision is the same as if the health care were provided as a result of the principal's decision.

SECTION 12. NATURAL DEATH ACT. To the extent that a durable power of attorney for health care conflicts with a directive or treatment decision executed under the Natural Death Act (Article 4590h, Vernon's Texas Civil Statutes), the instrument executed later in time controls. A physician who withholds or withdraws life-sustaining procedures from a principal with a terminal condition as required by an agent's directive is not required to comply with the Natural Death Act.

SECTION 13. RECIPROCITY. This Act does not limit the enforceability of a durable power of attorney for health care or similar instrument executed in another state or jurisdiction if the instrument complies with the law of the state or jurisdiction.

SECTION 14. DISCLOSURE STATEMENT REQUIRED. A durable power of attorney for health care is not effective unless the principal, before executing the durable power of attorney for health care, signs a statement that the principal has received a disclosure statement and has read and understood its contents.

SECTION 15. DISCLOSURE STATEMENT FORM. The disclosure statement must be in substantially the following form:

**INFORMATION CONCERNING THE DURABLE
POWER OF ATTORNEY FOR HEALTH CARE**

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the capacity to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing, or by your execution of a subsequent durable power of attorney for health care. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO OR MORE QUALIFIED WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

- (1) the person you have designated as your agent;
- (2) your health or residential care provider or an employee of your health or residential care provider;
- (3) your spouse;
- (4) your lawful heirs or beneficiaries named in your will or a deed; or
- (5) creditors or persons who have a claim against you.

SECTION 16. DURABLE POWER OF ATTORNEY FORM. The durable power of attorney for health care must be in substantially the following form:

**DURABLE POWER OF ATTORNEY FOR HEALTH CARE
DESIGNATION OF HEALTH CARE AGENT.**

I, _____ (insert your name) appoint:

Name: _____

Address: _____

Phone: _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This durable power of attorney for health care takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS: _____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name: _____

Address: _____

Phone: _____

B. Second Alternate Agent

Name: _____

Address: _____

Phone: _____

The original of this document is kept at _____

The following individuals or institutions have signed copies:

Name: _____

Address: _____

Name: _____

Address: _____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior durable power of attorney for health care.

ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this durable power of attorney for health care on _____ day of _____ 19____ at _____

(City and State)

(Signature)

(Print Name)

STATEMENT OF WITNESSES.

I declare under penalty of perjury that the principal has identified himself or herself to me, that the principal signed or acknowledged this durable power of attorney in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, that I am not the person appointed as agent by this document, and that I am not a provider of health or residential care, an employee of a provider of health or residential care, the operator of a community care facility, or an employee of an operator of a health care facility.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness Signature: _____

Print Name: _____ Date: _____

Address: _____

Witness Signature: _____

Print Name: _____ Date: _____

Address: _____

SECTION 17. CIVIL ACTION. (a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action in district court to request that the durable power of attorney for health care be revoked because the principal, at the time the durable power of attorney for health care was signed:

- (1) was not of sound mind to make a health care decision; or
- (2) was under duress, fraud, or undue influence.

(b) The action may be brought in the county of the principal's residence or the residence of the person bringing the action.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the district court orders otherwise.

SECTION 18. OTHER LEGAL RIGHTS OR RESPONSIBILITIES NOT LIMITED OR IMPAIRED. This Act does not limit or impair any legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care decisions on behalf of a person.

SECTION 19. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 18, 1989, by the following vote: Yeas 138, Nays 0; passed by the Senate on May 26, 1989, by the following vote: Yeas 31, Nays 0.

Approved June 14, 1989.

Effective June 14, 1989.

CHAPTER 492

H.B. No. 2104

AN ACT

relating to the posting of bond in certain actions in which a receiver may be appointed for the mineral interest or leasehold interest under a mineral lease owned by a nonresident or absent defendant.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 64.091(d), Civil Practice and Remedies Code, is amended to read as follows:

(d) In an action under Subsection (b)(1):

(1) the plaintiff, in the verified petition, must name the last known owner or the last record owner of the interest as defendant;

(2) the court may appoint as receiver the county judge and his successors, the county clerk and his successors, or any other resident of the county in which the land is located; ~~and~~

(3) the receiver is not required to post bond; *and*

(4) *notwithstanding the Texas Rules of Civil Procedure, the applicant is not required to post bond.*

SECTION 2. This Act applies to the posting of bond in an action without regard to whether the action was commenced before the effective date of this Act.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 12, 1989, by the following vote: Yeas 137, Nays 0; passed by the Senate on May 27, 1989, by the following vote: Yeas 31, Nays 0.

Approved June 14, 1989.

Effective June 14, 1989.

CHAPTER 493

H.B. No. 2117

AN ACT

relating to the licensing and regulation of home health care agencies and to permits to administer medication to patients of home health agencies; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (5), Section 1, Chapter 642, Acts of the 66th Legislature, 1979 (Article 4447u, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Certified agency" means a person who provides a home health service and *is certified* ~~holds a current letter of approval signed~~ by an official of the Department of Health and Human Services, ~~Education, and Welfare and~~ indicating compliance with conditions of participation in Title XVIII of the federal Social Security Act.

SECTION 2. Section 2, Chapter 642, Acts of the 66th Legislature, 1979 (Article 4447u, Vernon's Texas Civil Statutes), is amended to read as follows: